IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC., d/b/a WRS MOTION PICTURE LABORATORIES, a corporation Plaintiff, v. PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES von BERNUTH, an individual and JOHN HERKLOTZ, an individual Defendants	)	No. 2:00-CV-2041-AJS

DEFENDANT CHARLES VON BERNUTH'S RESPONSE TO MOTION TO MODIFY ORDER OF FEBRUARY 20, 2007 TO EXPRESS THAT COUNTERCLAIMS WERE DISMISSED, OR, IN THE ALTERNATIVE, MOTION TO MODIFY ORDER OF JULY 29, 2005

1. In an attempt to create finality for the pending appeal, Plaintiff WRS, Inc. has filed a Motion to Modify Order of February 20, 2007 Entering Default Judgment as to Defendants Eric Parkinson, Charles von Bernuth and Plaza Entertainment, Inc., to Express that Counterclaims Were Dismissed.

2. In fact, the neither the February 20, 2007, Order nor the motion that it granted made any mention of the Defendant's counterclaims, the merits of which have never been addressed.

3. For the reasons set forth at greater length in the accompanying brief, the February 20, 2007 Order should not be expanded to dismiss the counterclaims.

4. WRS's bankruptcy proceedings have no effect on the counterclaims, at least insofar as the counterclaims provide a defense of recoupment.

5. Moreover, the equities do not favor expansion of this Court's February 20, 2007 Order.

6. However, in the alternative, to the extent the bankruptcy proceedings compelled the dismissal of the counterclaims, which they do not, this would provide a compelling reason for modifying this Court Order of July 29, 2005 reopening the case, which was based on the perceived inequity of subjecting Plaintiff to defenses arising as a result of the bankruptcy proceedings and on an assurance that Defendants would not be prejudiced by the reopening.

7. It would be fundamentally unfair to allow WRS to reopen the case on equitable grounds and thus to assert its claims free of statute of limitations and other defenses that may have arisen during the bankruptcy proceedings, while holding that the same bankruptcy proceedings had the effect of extinguishing the Defendants' counterclaims.

WHEREFORE, Defendant Charles von Bernuth respectfully requests that the Court deny Plaintiff's Motion to Modify Order of February 20, 2007 to Express That Counterclaims Were Dismissed, or, in the alternative, grant this Motion to Modify Order of July 29, 2005 to express that WRS's Motion to Reopen this case, which had been administratively closed, is denied and that all subsequent judgments are vacated.

Respectfully submitted,

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Date: November 26, 2007

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by the Court's ECF/CM system and by U.S. First Class Mail, Postage Pre-Paid, upon the on this 26th day of November, 2007, as follows:

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